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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE, 1998

BEFORE

THE HON'BLE MR. JUSTICE V.K. SINGHAL

WRIT PETITION NUMBER: 17090/1998

BETWEEN:

M.A. Hameed,
s/o Abdulla,
Bellagere village,
Madikeri Taluk
Kodagu District.

PETITIONER

(By Sri.B.R.Sundarajagupta, Adv.,)

AND:

1. The Deputy Commissioner for
Transports, Mysore Division,
2. R.T.O., Madikeri.
3. Manager, Syndicate Bank, Marnad, Madikeri Dist.
(By Smt.S.Sujatha, HCGP)

RESPONDENTS

This petition is filed praying to quash
Annexure-D dtd. 11-5-1998.

This petition coming on for preliminary
hearing this day, the court made the following:-

O R D E R

The only controversy which has been raised
in the present petition is that the order on
appeal under the Karnataka Motor Vehicles Act,
1957 have been passed by a person who is ^{not} authorised
to hear the appeal.

2. Arguments of both the learned counsel for
the parties have been heard. Under Section 15 of
the Act of 1957, appeal lies to the prescribed
authority. Rule 31 of the Karnataka Motor Vehicles

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Taxation Rules 1957, provide that appeal will lie to the Deputy Commissioner for Transport if the original order is that of an officer other than the Commissioner and the Deputy Commissioner for Transport. The proviso provides that if the original order has been passed by the Deputy Commissioner for Transport himself in some other capacity, appeal against such original order shall lie, to the Commissioner. The term Deputy Commissioner for Transport under Rule 2(bb) of the Rules, 1957 is as under:-

" Deputy Commissioner means the Commissioner for transport appointed by the State Government to be a Deputy Commissioner for transport for a division."

3. In the present matter, the temporary arrangement has been made by the Commissioner for Transport, by the order dated 5-5-1997 which is as under:. (English Translation).

" To,

The Deputy Commissioner for Transport,
Mysore Division,
Mysore.

Sub: Making incharge arrangement in respect of retiring officers of Dy., Commr., for Transport and RTO of Gundlupet Checkpost. Issue of order-- Reg.--

Ref:- Your letter No.dtd. 21-4-1997.

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With reference to the above subject and reference the following incharge arrangement have been made in respect of post falling vacant on retirement w.e.f.31-5-1997

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|-------------------|---|
| 1. DCT Mysore, | RTO Mysore. |
| 2. ARTO Gundlupet | To post Sr.IMV on
deputation from
RTO Mysore. |

This arrangement has been made as per the direction of the Commissioner for Transport, Bangalore. They shall assume the charge on the date of retirement.

"By order of the
Commissioner for
Transport, Bangalore.

Yours faithfully,

Jt. Commr., for
Transport (Admn)."

4. In the above temporary arrangement, RTO, Mysore, has been directed to assume the charge of the Deputy Commissioner for Transport, Mysore by the Joint Commissioner for Transport (Admn.,) on the direction of the Commissioner for Transport. Under the scheme of the Act there has to be a notification by the State Government for appointment of a person as Deputy Commissioner for transport for a **division**. Unless that is being done, he cannot exercise the power under Rule 31.

5. Delegatus non potest delegare, the Commissioner himself is a delegatee of the State Government and has no further power of delegation unless conferred by the Statute. Under Section 2(b) of the Karnataka Motor Vehicles Taxation Act, "taxation Authority" has been defined as under:-

" 2.(b) " taxation authority" means

(1) in the case of a fleet owner, the Commissioner for Transport or any other officer appointed by the State Government in this behalf; and

(ii) in other cases, such officer as may be appointed by the State Government to exercise the powers and perform the functions of the taxation authority under this Act,"

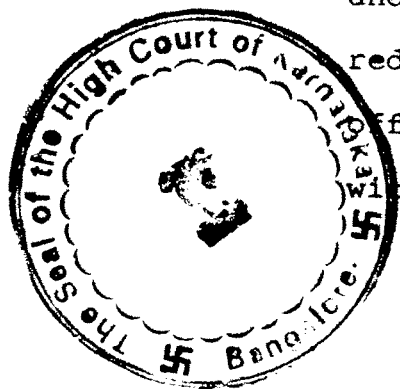
Section 22 of the Act prescribed under Clause 2(c) the authority to which, the time within which and the manner in which an appeal may be made under Section 15, the fees to be paid in respect of such appeal and the conduct and hearing of such appeal; The Rules have already prescribed the authority to whom the appeal is to be filed and i.e., the Deputy Commissioner for Transport. Rule 2(bb) of the Karnataka Motor Vehicles Taxation Rules 1957 defines Deputy Commissioner for transport as any officer appointed by the State Government to be the Deputy Commissioner for Transport for a division. As the appointment of Deputy Commissioner for Transport is to be made by the State Government and Commissioner is not the appointing authority for making the appointment, he cannot confer the power on any person to act as Deputy Commissioner for Transport to discharge the statutory duties. The administrative order, the english translation copy of which has

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has been reproduced above is pure and simple administrative order, which cannot authorise the officer to exercise the statutory power and as such the orders passed disposing of the appeal is without jurisdiction.

5. The present order which is now passed is without jurisdiction and is quashed. The appeal of the petitioner has to be heard only by the person having proper jurisdiction for which the proper notification is to be issued by the Government. The power of temporary arrangement for taking charge by an officer with the Head of the Department is for administrative convenience. In such a situation, the officer who has been given the charge can perform the administrative functions but not the judicial or quasi-judicial functions which the statute has contemplated to be performed by the authority designated for the purpose. The State Government has the power to appoint an officer and the power with which such an authority is conferred with the jurisdiction which is given to an officer is with the State Government and not with the Commissioner.

Petition stands disposed of accordingly.



Sd/-
JUDGE